

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
	)	
Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers	)	CC Docket No. 95-185
	)	
	)	
Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commission of Texas	)	NSD File No. 96-8
	)	
	)	
Administration of the North American Numbering Plan	)	CC Docket No. <u>92-237</u>
	)	
	)	
Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech-Illinois	)	IAD File No. 94-102
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Comments on Petitions for Reconsideration  
of  
The Southern New England Telephone Company

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The Southern New England Telephone Company ("SNET") hereby files its Comments on Petitions for Reconsideration filed on October 7, 1997, of the Commission's Second Report and Order and Memorandum Opinion and Order in the above captioned proceedings.<sup>1</sup> SNET is the incumbent local exchange carrier serving nearly all of the State of Connecticut, with two million access lines in service. SNET supports those parties who

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<sup>1</sup> FCC 96-333 (rel. August 8, 1996), summarized at 61 Fed. Reg. 47284 (September 6, 1996) ("Second Report and Order"), petition for review pending sub nom., Iowa Util. Board et al. v. FCC, No. 96-3321 and consolidated cases (8th Cir., filed September 6, 1996).

oppose the Commission's carrier access code (such as 10XXX) and default ruling on the grounds that it would (i) be disruptive to state processes already implemented in some states, such as Connecticut; (ii) run counter to the testimony universally proffered in Connecticut that neither balloting nor access codes are needed; (iii) impermissibly infringe on state jurisdiction to decide purely intrastate matters; and (iv) impose significant technical risks associated with implementation of an alternative that would affect virtually no customers - and be of marginal, if any, benefit to them.

## I. INTRODUCTION

The Commission's Second Report and Order states, among other things, that "dial-tone providers' should not be permitted automatically to assign to themselves new customers who do not affirmatively choose a toll provider," and that "nonselecting customers should dial a carrier access code to route their intraLATA toll or intrastate toll calls to the carrier of their choice until they make a permanent, affirmative selection."<sup>2</sup>

Several parties have petitioned for reconsideration of this requirement.<sup>3</sup> SNET agrees with these parties on this matter, and urges the Commission to modify the above regulation to allow those states that have issued orders requiring intrastate toll presubscription prior to the release of the Second Report and Order to continue implementation of those orders. SNET also believes that the Commission should allow the states to manage area code changes in their own states.

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<sup>2</sup> Second Report and Order, para. 81.

<sup>3</sup> See, e.g., USTA Petition for Reconsideration, pgs. i, 8; NYNEX Petition for Reconsideration and/or Clarification, pgs. i, 6, 7; SWBT Petition for Reconsideration, pgs. 2-4; GTE Petition for Clarification, pgs. 4-7.

II. THE COMMISSION SHOULD LET EXISTING INTRASTATE PRESUBSCRIPTION REGULATIONS STAND.

A. Enforcement Of The Carrier Access Code Rule Would Disrupt Connecticut's Established Presubscription Process.

On October 26, 1994, SNET's intrastate regulator, the Connecticut Department of Public Utility Control ("Department") issued its Decision in its intrastate equal access docket.<sup>4</sup> After nearly a year of discovery, hearings and briefing, the Department concluded that the Dual PIC Option<sup>5</sup> of providing equal access would further intrastate competition, and, accordingly, was consistent with the State's pro-competition goals and the public interest.<sup>6</sup> It is important to note the Department adopted its Decision, which brought full toll competition to Connecticut, nearly 1½ years before enactment of the Telecommunications Act of 1996.<sup>7</sup>

While the Department also established a schedule by which SNET was to convert to in-state equal access,<sup>8</sup> SNET has actually accomplished conversion well ahead of schedule, and will have converted 100% of its two million exchange lines to equal access by November 25, 1996.<sup>9</sup>

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<sup>4</sup> Connecticut Department of Public Utility Control Docket No. 94-02-07, Southern New England Telephone Company Implementation of Intrastate Equal Access and Presubscription, Decision, October 26, 1994 ("Decision").

<sup>5</sup> The "Dual PIC Option" adopted by the Department in the Decision is identical to the "2-PIC method" adopted by the Commission in the Second Report and Order (paras. 49-50).

<sup>6</sup> Decision, pg. 4.

<sup>7</sup> The Department also ordered unbundling and interconnection long before the Commission released its First Report and Order in this Docket. See Connecticut Department of Public Utility Control Docket No. 95-06-17, Application of The Southern New England Telephone Company For Approval To Offer Unbundled Loops, Ports And Associated Interconnection Arrangements, Decision, December 20, 1995.

<sup>8</sup> SNET was to convert 89.5% of its switches to equal access by year-end 1996, with 98% being converted by the end of 1997. Decision, pg. 15.

<sup>9</sup> See Letter of Kathleen A. Carrigan, SNET Senior Counsel to Robert J. Murphy, Executive Secretary, Department of Public Utility Control, Re: Intraexchange Equal Access Implementation, September 12, 1996. SNET's completion of the equal access and presubscription plan renders moot the Commission's directive to submit such plans to the respective state regulatory commission (Second Report and Order at para. 38).

SNET supports petitioners who submit that those states which have issued intrastate toll presubscription orders prior to release of the Second Report and Order must be permitted to implement presubscription pursuant to those orders.<sup>10</sup>

The Commission has acknowledged that:

The states are best positioned to determine the ... carrier selection procedures that best meet the needs of consumers and telecommunications services providers in their states. Thus, states may adopt ... carrier selection procedures that will enable consumers to select alternative carriers for their local and toll services.<sup>11</sup>

This, of course, is exactly what the Department did over two years ago.<sup>12</sup> There is no reason to adopt now a federal requirement for intrastate "carrier access codes" in contravention of an established, well-reasoned state ruling that was based on an extensive local evidentiary record.

With respect to new customers who have not affirmatively designated an intrastate carrier, SNET recommends that regulations that have been adopted by a state in its consideration of intrastate equal access be allowed to stand, and that the FCC's statement in Paragraph 81 regarding the necessity for a dial-tone provider to permit these new undecided customers to dial a "carrier access code" need not be enforced in states which have duly adopted a presubscription process.<sup>13</sup>

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<sup>10</sup> See USTA Petition for Reconsideration, pg. 8; NYNEX Petition for Reconsideration and/or Clarification, pg. 7.

<sup>11</sup> Second Report and Order, para. 80 (emphasis added).

<sup>12</sup> The Commission has recognized the availability of intraLATA toll dialing parity in Connecticut, as well as many other states. Second Report and Order at note 31.

<sup>13</sup> For example, the Department recently approved the New York Telephone Company's proposal, modeled after the Department's Decision regarding SNET's presubscription plan, to "default nonselecting new and existing customers to itself." Docket No. 96-08-24, Application of New York Telephone Company for Implementation of Intrastate Equal Access and Presubscription, Draft Decision, October 9, 1996. See also NYNEX Petition for Reconsideration and/or Clarification, at note 18.

Thus, the Department has produced an effective equal access and presubscription program which -- by the gift of foresight and strong State goals and public policies<sup>14</sup> supporting intrastate competition -- also meets the Commission's goal of opening local markets to competition.<sup>15</sup> The Commission should not overturn this well-established program.

B. There Is No Market Need For, Or Benefit Of, Intrastate Carrier Access Codes In Connecticut.

The Department's equal access and presubscription Decision intentionally did not require end users to dial a carrier access code:

Callers would not have to dial a 10XXX access code. ... Elimination of the requirement to dial 10XXX to access an interexchange carrier (IXC) will allow end users to choose any one of a number of IXCs for their in-state toll calling needs or continue to use their LEC.<sup>16</sup>

Significantly, the Department also recognized that "in the absence of a request for a specific long distance carrier, customers would remain with their current intrastate toll carrier."<sup>17</sup> MCI has supported this approach, and agreed that the end users not be balloted as this would unnecessarily increase costs and might lead to customer confusion.<sup>18</sup> AT&T, Sprint, and the Connecticut Office of Consumer Council also preferred the Dual PIC Option, with the customer selection process, without carrier dial access codes or balloting.<sup>19</sup> The

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<sup>14</sup> On July 1, 1994, Public Act 94-83 took effect in Connecticut. This legislation dramatically changed the telecommunications landscape by allowing competition in local and intrastate toll telephone services, permitting telephone companies to offer cable television services, and cable television companies to offer telephone services, and otherwise reducing barriers to entry of new telecommunications providers of services to Connecticut consumers.

<sup>15</sup> Second Report and Order, para. 2.

<sup>16</sup> Decision, pg. 2.

<sup>17</sup> Decision, pg. 4.

<sup>18</sup> Id.

<sup>19</sup> Id.

Department determined that the costs of balloting greatly outweighed any benefit that could be derived and could be passed on to the telecommunications consumer.<sup>20</sup> Citing a market study, the Department further recognized that "customers preferred SNET to carry their intrastate long distance telephone calls until they choose another carrier."<sup>21</sup> "The Department ... will permit customers to choose an intrastate long distance carrier at their convenience."<sup>22</sup>

Thus, the Department's Decision was based on evidence before it about the preferences and interests of Connecticut consumers. Nor is there any evidence since to suggest that the Department's action has in any way inhibited the development of competition in the intrastate toll market.<sup>23</sup> Noting SNET's recent significant share losses in the market, the Department has issued a Draft Decision that has found the in-state toll service market to be "fully competitive."<sup>24</sup>

Therefore, there is no need to require intrastate carrier dial access codes in Connecticut.

C. The Carrier Access Code Rule Infringes Upon State Jurisdiction.

While SNET understands that the Commission does have authority over numbering administration matters, SNET states that the Commission does not have authority over intrastate access codes or presubscription procedures, which are indeed purely intrastate

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<sup>20</sup> Decision, pgs. 4, 14.

<sup>21</sup> Id. (Emphasis added.)

<sup>22</sup> Decision, pg. 4.

<sup>23</sup> In fact, the Department has approved 144 Applications for Certificates of Public Convenience and Necessity to provide competitive intrastate message toll service; over 60 other Applications are pending.

<sup>24</sup> See Connecticut Department of Public Utility Control Docket No. 96-06-23, Application of The Southern New England Telephone Company For Approval To Reclassify Message Toll Service From Noncompetitive To Competitive, Draft Decision, November 8, 1996.

matters. Nothing in the Telecommunications Act of 1996 grants the FCC such authority. Moreover, Section 2(B) of the Communications Act of 1934 makes it clear that such authority does not apply. Section 2(B) provides that "nothing in this Chapter shall be construed to apply or give the [Commission] jurisdiction with respect to ... charges, classifications, practices, services, facilities or regulations for or in connection with intrastate communications service." 47 U.S.C. Section 152(b).

The United States Supreme Court described Section 2(B) as a "sweeping" limitation on FCC jurisdiction over intrastate matters that can only be overcome by an "unambiguous" or "straightforward" Congressional modification of Section 2(B) itself, or an express grant of authority to the FCC itself. Louisiana Pub. Serv. Comm'n v. FCC, 477 U.S. 355, 370, 377 (1986). No such "unambiguous," "straightforward," or express grant of authority is present here. SNET concludes that the FCC does not have jurisdiction over intrastate access codes or presubscription procedures.

D. Significant Technical Risks Would Be Incurred For The Benefit Of Virtually No Customers.

SNET states that its switch vendors have no reasonable technical solution available to implement intrastate carrier dial access codes for the great majority of switches in SNET's territory. In order to provide an intrastate dial access code feature similar to the "10XXX" code available for access to interstate carriers, SNET or its switch vendors would have to implement non-standard "work-around" codes, that are outside of existing software generics, into SNET's on-line switches.<sup>25</sup> While "work-arounds" can be implemented, they remain non-standard changes in the network that cannot be fully tested for future standard applications. The introduction of untested software modifications into operating switches

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<sup>25</sup> This problem is magnified by the fact that the Department has already authorized 144 carriers to provide competitive intrastate toll services (either through resale or facilities) to end users in Connecticut.

could jeopardize future network performance and reliability. Switch vendors have informally advised SNET that it would be unwise to make any software changes outside of a routine generic upgrade.

While it would not be impossible to design and implement non-standard intrastate access codes to be used by "nonselecting new customers," these codes would benefit only a minuscule portion of the end user universe. When customers call into SNET to establish new dial tone service, SNET not only notifies them of the availability of competing in-state toll carriers, SNET also gives them ample opportunity to select a carrier from lists of the carriers SNET maintains for such purposes. Should the new customer then still not be willing or able to select an in-state toll carrier, the Department's Decision permits SNET to designate itself as the in-state toll carrier until the customer makes an affirmative selection at his or her convenience.<sup>26</sup> The number of new customers who are thereby assigned to SNET because of their indecision is very small indeed.<sup>27</sup> This small number of customers does not warrant the expense and risk to the network of establishing non-standard intrastate carrier dial access codes, especially when these customers can always select whatever in-state carrier they want, whenever they want.

### III. THE COMMISSION SHOULD ALLOW STATES TO MANAGE AREA CODE CHANGES IN THEIR OWN STATES.

The Commission has authorized states to resolve matters involving the implementation of new area codes, subject to Commission guidelines.<sup>28</sup> A number of parties

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<sup>26</sup> Decision, pg. 4.

<sup>27</sup> As SNET does not keep its records for new business or residence customers in such a way as to identify the number of new customers who do not affirmatively select an intrastate toll carrier after being given a reasonable opportunity to do so, SNET is unable to provide a count or a percent of this kind of occurrence without extensive research. SNET's subject matter experts believe, however, that the number is very, very small in relation to the total number of new customers establishing dial tone service.

<sup>28</sup> Second Report and Order, paras. 271, 281-293; also 47 CFR § 52.19.



have petitioned for reconsideration of several of these guidelines, such as the "90-day requirement."<sup>29</sup> SNET submits that the Commission's 90-day requirement adds little if anything to the administration of an area code overlay plan. USTA is correct in stating that the 90-day rule will impede competitively neutral code reform because state regulators and industry participants will have to predict accurately the number of NXXs that will have to be set aside 90 days prior to implementation.<sup>30</sup> This would amount to warehousing of codes and would actually accelerate exhaust of the area code in question. SNET recommends that the Commission adopt the NYNEX approach, and let the industry, through the Commission-supported Industry Carriers Compatibility Forum (ICCF), continue the existing process of NXX assignments.<sup>31</sup> No party has demonstrated any breakdown in the ICCF processes that warrants federal regulatory intervention at this time. The 90-day rule further limits the states' responsibility to resolve matters involving the implementation of new area codes, in contravention of the Commission's own policy.<sup>32</sup> SNET recommends that the Commission delete the 90-day requirement in § 52.19(c)(3)(iii).<sup>33</sup>

Several parties have also petitioned the Commission to require permanent number portability prior to an all-services overlay plan.<sup>34</sup> Some CLECs have become very vocal

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<sup>29</sup> USTA Petition for Reconsideration, pgs. 9-11; NYNEX Petition for Reconsideration and/or Clarification, pgs. 11-12.

<sup>30</sup> USTA Petition for Reconsideration, pg. 10.

<sup>31</sup> NYNEX Petition for Reconsideration and/or Clarification, pg. 12.

<sup>32</sup> Second Report and Order, para. 272. Also, of significant note is the fact that the Connecticut Department of Public Utility Control has very recently opened a new Docket (No. 96-11-10) to investigate the management of area code changes.

<sup>33</sup> SNET, similar to SWBT (SWBT Petition for Reconsideration at pg. 27), also interprets Paragraph 286 of the Second Report and Order such that at least one NXX will be assigned to each of those facilities-based carriers with existing state authorizations which have not previously been assigned an NXX from the exhausting NPA; that is, this guideline is not applicable to non-facilities-based carriers, or those carriers which currently have NXXs assigned to them.

<sup>34</sup> Teleport Petition for Reconsideration, pgs. 8-12; Petition for Reconsideration of Cox Communications, pgs. 2-7; MFS Petition for Partial Reconsideration, pgs. 2-6; AT&T Petition for Limited Reconsideration and Clarification, pgs. 8-9.

regarding this issue.<sup>35</sup> Nevertheless, a long term local number portability solution has already been adopted by the Commission, which has very recently promulgated rules requiring a very ambitious implementation schedule.<sup>36</sup> In short, the Commission cannot change these adopted rules in accordance with petitioners' wishes without another proceeding to this effect, as the local number portability rules are not a matter for consideration in the instant rulemaking docket. More importantly, a number portability plan prerequisite to an area code overlay simply would not solve the shortage of numbers, which is the driver for additional area codes.<sup>37</sup> SNET recommends that the Commission, in consideration of the states' unique understanding of local conditions,<sup>38</sup> not require number portability prior to an area code overlay, and that it continue to defer to the states on overlay matters.

#### IV. CONCLUSION

Enforcement of the Commission's intrastate carrier dial access code requirement for new undecided customers would overturn Connecticut's well-conceived, well-executed, long-standing and duly adopted intrastate equal access and presubscription process. SNET respectfully requests that the Commission not overturn the Connecticut Department's

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<sup>35</sup> Engebretson, J., "Area Code Red," TELEPHONY, October 28, 1996, pg. 20.

<sup>36</sup> See In the Matter of Telephone Number Portability, CC Docket No 95-116, RM 8535, First Report and Order, FCC 96-286, rel. July 2, 1996; petitions for reconsideration pending.

<sup>37</sup> "Even though local number portability will reduce the need for CLECs to assign new numbers, it is currently not a solution to the number shortage." Engebretson, J., at 25.

<sup>38</sup> Second Report and Order, para. 272.

Decision, now fully implemented. The Commission should modify its regulations to allow established state equal access and presubscription rules to stand.

Respectfully submitted,

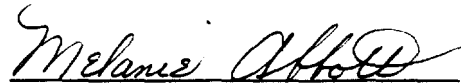
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November 20, 1996

Certificate of Service

I, Melanie Abbott, do hereby certify that on November 20, 1996, the foregoing Comments on Petitions for Reconsideration of The Southern New England Telephone Company of the Second Report and Order in CC Docket No. 96-98 were either hand delivered, or deposited in the U.S. Mail, first class postage prepaid to the persons on the attached Service List.

A handwritten signature in cursive script, reading "Melanie Abbott", written over a horizontal line.

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